

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-456

September 28, 1999

PUBLIC UTILITIES COMMISSION
Energy Conservation Programs by
Electric Transmission and Distribution
Utilities (Chapter 380)

ORDER ADOPTING RULE
AND STATEMENT of
FACTUAL and POLICY BASIS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we adopt a rule that establishes the funding levels and assessment mechanism necessary to implement the recently amended provisions of 35-A M.R.S.A. § 3211 related to energy conservation programs conducted by electric transmission and distribution utilities. The rule replaces currently existing Chapter 380.

II. BACKGROUND

As part of the legislation enacted in 1997 to deregulate electric generation service after March 2000, the Legislature included certain requirements to maintain the provision of energy conservation programs by transmission and distribution (T&D) utilities. 35-A M.R.S.A. § 3211 (Supp. 1998) (repealed and replaced effective September 18, 1999 by P.L. 1999, ch. 336, § 3). On January 6, 1999, the Commission provisionally adopted a new version of Chapter 380 to implement the statutory provisions. This rule included a funding level for programs (1.4358 mils per kWh, net of ongoing costs of programs), a bidding process for utilities to select contractors to operate programs, and spending levels for low-income customers and other customer classes. As required by statute, this was a major substantive rule requiring legislative approval pursuant to 5 M.R.S.A. §§ 8071-8074.

After consideration of various amendments to 35-A M.R.S.A. § 3211, the Legislature on May 20, 1999, adopted a resolve that did not authorize the final adoption of the rule as provisionally adopted by the Commission in January 1999. In its place, the Legislature adopted An Act to Secure Environmental and Economic Benefits, P.L. 1999, ch. 336. This Act authorizes the State Planning Office to coordinate the development of a state energy policy and guide the development of statewide conservation programs to be implemented by transmission and distribution utilities. This includes creating overall objectives and strategies, reviewing and approving utility implementation plans, and monitoring and evaluating T&D utility programs. 5 M.R.S.A. § 3305-B(2). This new legislation requires the Commission to establish total conservation program expenditures for each transmission and distribution utility and to assess T&D utilities to fund the efforts of the State Planning Office, as specified by statute. 35-A M.R.S.A. § 3211(6). The Commission must adopt rules to implement the

provisions in 35-A M.R.S.A. § 3211. These are routine technical rules pursuant to 5 M.R.S.A. § 8071(2).

On July 27, 1999, the Commission opened this rulemaking to propose a rule consistent with the provisions of the new legislation. A hearing was held on August 24, 1999. Representatives of the following entities participated in the hearings: Public Advocate (OPA); Maine Community Action Association (MCAA); Van Buren Light and Power and Dirigo (Dirigo); Bangor Hydro Electric Company (BHE); Coalition for Sensible Energy, Natural Resources Council and Central Maine Power Company. In addition BHE, Madison Paper Industries (Madison), OPA, CMP and Dirigo filed written comments.

III. DISCUSSION OF INDIVIDUAL SECTIONS AND COMMENTS

A. Section 1: Definitions

Section 1 contains the definition of the terms used in this Chapter. The definitions are derived directly from 35-A M.R.S.A. § 3211 and 5 M.R.S.A. § 3305-B. The only change to the proposed rule is the addition of a definition of “Total Transmission and Distribution Revenues” upon the suggestion of Madison, as explained in Section III. C. below.

B. Section 2: Conservation Programs

Consistent with 5 M.R.S.A. § 3305-B, this section requires utilities to implement programs that will be consistent with the programs developed by the State Planning Office. Utilities must select providers of energy efficiency services through a bid process. Under the proposed rule, the State Planning Office could request a waiver of the bid requirement. MCAA supported this provision as it believes there may be programs for low-income customers that SPO will determine should be run by the CAPs, without the need for a bid process. BHE asked that the T&D utilities be permitted to seek a waiver directly, “presumably with the blessing of the State Planning Office.”

The statute allows a waiver of bidding only upon a finding that the waiver is consistent with programs developed by SPO and is in the best interest of the state. Because the SPO will be in the best position to tell the Commission whether such a waiver is consistent with its programs, we believe any waiver request should be made either by the SPO or jointly by SPO and the T&D utility or another party. We have made that change to the final rule.

C. Section 3: Funding; Cost Recovery

Section 3 provides that energy conservation programs will be funded through utility rates. The Commission will establish the funding recovery mechanism

through rate proceedings for both program costs and recovery of the assessment for the State Planning Office. Consistent with 35-A M.R.S.A. § 3211(4), section 3(B) of the rule sets the minimum funding level at 0.5% of total transmission and distribution revenues for each T&D utility. To the extent required by the State Planning Office's statewide conservation program developed pursuant to 5 M.R.S.A. § 3305-B(2), funding may be increased by the Commission to .15 cents per kWh, the statutory cap. These amounts include any continuing expenditures associated with programs to promote conservation undertaken at the direction of the Commission prior to March 1, 2000 and any assessments pursuant to section 4 of this Chapter.

A number of commenters (BHE, Madison, Dirigo, CMP) expressed concern that the rule in Section 3(B) appeared to allow the SPO rather than the Commission, to determine whether the funding level should go to the statutory cap of .15 cents per kilowatt-hour. It is our intention that the Commission determine the appropriateness of funding in excess of the statutory floor of 0.5% of T&D revenues as required by 35-A M.R.S.A. § 3211(4), based on the recommendation of SPO. This section of the final rule has been reworded to make this clear. We expect T&D utilities and parties to make their views on funding levels known to the SPO so that that information can be factored into SPO's recommendation.

Madison also asks that the Commission clarify that total T&D revenues used as a basis for determining the level of energy conservation expenditures for consumer-owned utilities does not include: (1) revenues, if any, associated with the provision of power supply by consumer-owned utilities, (2) contingency reserves, if any, that may be collected by T&D utilities (see, e.g., 35-A M.R.S.A. § 3503(5)(C)(3), allowing for as much as a 25% addition to revenues), (3) assessments applicable to the costs of special facilities installed in order to provide service to a particular customer(s), and (4) revenues associated with the provision of standard offer service. Madison asserts that in the context of the restructured electric utility industry as it will exist after March 1, 2000, each of these items is an inappropriate measure to be included in the revenues upon which conservation program expenditures are to be based.

We agree that any revenue for generation services as permitted by 35-A M.R.S.A. § 3207, including providing generation or the standard offer service, should not be considered T&D revenue. We have added a definition of total transmission and distribution utility revenues to Section 1(E) to make clear that any such revenues are excluded. We reject Madison's suggestion that any contingency reserve amount included in rates or any assessments for special facilities be excluded from the calculation. These are revenues generated due to the T&D function and therefore should be included as revenues for determining energy conservation spending levels.

Dirigo suggests that section 3 include a requirement that SPO hold a public hearing and consider input from T&D utility and interested parties before making a recommendation about the funding level. We assume this will take place as 5 M.R.S.A. § 3305-B(3)(G) requires SPO to "invite, accept, review and consider comments and suggestions from interested parties and hold at least one hearing prior to

adopting or substantially revising program objective or energy strategies under section 2.” Therefore, it is not necessary to add this requirement to the Commission’s rule.

CMP suggests that we clarify that the funding levels will be calculated based on projected sales and revenues rather than historic levels. First, we note that the revenues generated for energy conservation will be based on “actual” sales. We expect to determine the initial amount of energy conservation spending for each utility in current rate cases setting rates for March 2000. The Commission will determine .5% of the revenue requirement established in the case, then turn that number into a cents per kWh amount based on test year adjusted sales. The amount per kWh times projected sales will be the initial amount available for energy conservation programs. To assure that the amount spent on conservation reflects the actual revenue of utilities, the utilities will maintain a balancing account to reflect the difference between the amount in rates and the amount to be spent based on actual revenues. To the extent the amount to be spent based on actual revenues is over/under the amount included in rates, the utility will adjust the amount available next time it goes out to bid. This will keep the utility neutral and assure that over time the proper amount (based on actual revenues) is spent. The actual amount in rates will remain constant until the next time the Commission establishes the utility’s revenue requirement. At that time a new amount per kWh will be established using the new revenue requirement. Section 3(B) and 3(C) have been revised to reflect this clarification.

D. Section 4: Assessment

Section 4 describes the process for assessing each T&D utility for the costs associated with supporting the State Planning Office to carry out its responsibilities under 5 M.R.S.A. § 3305-B. 35-A M.R.S.A. § 3211(6) requires the Commission to “assess an amount of funds equal to the amount that the legislative allocation in that fiscal year from the Conservation Program Fund established under Title 5, section 3305-B exceeds any unencumbered amount in the fund carried forward from the prior fiscal year.” The legislative allocation is \$137,255 in 1999-2000 and \$150,702 in 2000-2001. These amounts would be offset by an amount unspent and carried over from the previous fiscal year. We received no comments on this section.

E. Section 5: Reporting

Section 5 of the proposed rule required T&D utilities to report to the Commission quarterly on their energy conservation activities. This section also requires T&D utilities to submit to the Commission copies of any evaluation reports filed with the State Planning Office. CMP asked if the reporting could be less frequent, particularly given that most conservation will be obtained through competitive bidding. We agree that a semi-annual report will provide adequate information and have amended the final rule accordingly.

F. Section 6: Waiver or Exemption

Section 6 contains the standard rule waiver provisions.

Accordingly we,

O R D E R

1. That the attached Chapter 380, Energy Conservation Programs by Electric Transmission and Distribution Utilities is adopted and repeals and replaces current Chapter 380, Demand Side Energy Management Programs by Electric Utilities;
2. That the Administrative Director shall file the adopted rule and related material with the Secretary of State;
3. That the Administrative Director shall send copies of this Order and the attached rule to:
 - a. All electric utilities in the State;
 - b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
 - c. All persons listed on the service list for this Docket and Docket No. 97-591; and
4. That the Administrative Director shall notify all persons on the Commission's list of persons who wish to receive notice of all electric restructuring proceedings that the rule was adopted and is available upon request.

Dated at Augusta, Maine, this 28th day of September, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond

COMMISSIONER ABSENT: Nugent